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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/605,266	06/28/2000	Rama Akella	SBI-066	6018

7590 08/30/2004

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EXAMINER

ANDRES, JANET L

ART UNIT PAPER NUMBER

1646

DATE MAILED: 08/30/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/605,266	AKELLA ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Janet L. Andres	1646	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 09 June 2004.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-24 and 26-29 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 6, 18-23 and 26 is/are allowed.
- 6) ☒ Claim(s) 1-5, 7-17, 24 and 27-29 is/are rejected.
- 7) ☒ Claim(s) 28 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 28 June 2000 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input checked="" type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)         | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

## **RESPONSE TO AMENDMENT**

1. Applicant's amendment filed 7 June 2004 is acknowledged. Claims 1-24 and 26-29 are pending and under examination in this office action. The text of those sections of Title 35, U.S. Code, not included in this action can be found in a prior office action.

### ***Claim Rejections Withdrawn***

2. The rejection of claims 9-12 under 35 U.S.C. 102(b) as anticipated by the '739 patent is withdrawn in response to Applicant's amendment reciting a bone protein mixture.

3. The rejection of claim 26 under 35 U.S.C. 102(b) as anticipated by the '124, '191, and '763 patents is withdrawn in response to Applicant's amendment excluding bone repair.

4. The rejection of claims 1, 3-5, 7, 8, and 13-17 under 35 U.S.C. 103(a) as unpatentable over Want et al. in view of Cerletti et al. or the '739 patent and Ksander et al. is withdrawn in response to Applicant's amendment reciting a bone protein mixture.

### ***New Grounds of Objection/Rejection***

5. Claims 1-5, 7-17, 24, and 27-29 are newly rejected under 35 U.S.C. 112, second paragraph, as indefinite in the reference to "a bone protein mixture". What is defined in the specification is "BP"; at no point is "a bone protein mixture" defined. It is suggested that language such as "BP (bone protein mixture)" might overcome this rejection.

6. Claim 28 and the brief description of the drawings are newly objected to as failing to comply with the sequence rules. The fragments specified in the claim should be referred to by reference to the sequence identifier of an entered sequence, as should the fragments in figures 16A and 16B.

7. The drawings filed 28 June 2000 are newly objected to; see attached draftsman's review. It is recognized that the drawings were earlier accepted. However, the drawings were erroneously believed to have been filed after 29 November 2000 and thus to have been reviewed for pre-grant publication.

CLAIMS 6, 18-23, AND 26 ARE ALLOWED. CLAIMS 1-5, 7-17, 24, AND 27-29 ARE REJECTED.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Janet L. Andres whose telephone number is 571-272-0867. The examiner can normally be reached on Monday, Tuesday, Thursday, Friday, 8:00-4:30.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brenda Brumback can be reached on 571-272-0961. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Janet L. Andres, Ph.D.  
25 August 2004

  
**JANET ANDRES**  
**PRIMARY EXAMINER**